

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 365**

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**Introduced by Assembly Member Ammiano**

February 23, 2009

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An act to add Division 23 (commencing with Section 80000) to the Financial Code, relating to financial institutions.

### LEGISLATIVE COUNSEL'S DIGEST

AB 365, as amended, Ammiano. Consumer Overdraft Protection Fair Practices Act.

Existing law provides for the certification and regulation of state organized banks and credit unions by the Commissioner of Financial Institutions. Existing law prohibits a bank from imposing a charge on a savings account, as defined, or on a depositor for the failure of a depositor to deposit, or for the late deposit of, any agreed periodic installment deposit into that account. Existing law authorizes a credit union to assess charges for failure to meet punctuality obligations to the credit union.

This bill would enact the Consumer Overdraft Protection Fair Practices Act. The bill would prohibit a financial institution, defined ~~as a~~ *to include state and federally regulated bank or credit union banks and credit unions*, from imposing an overdraft protection fee, as defined, when covering the payment on a transaction for which there are insufficient funds in a customer's account unless specified conditions are satisfied, including that the customer has provided specific written consent to an overdraft protection program or service that provides for

the imposition of an overdraft protection fee. The bill would prohibit a financial institution that offers an overdraft protection program or service from making certain advertisements and representations ~~and would require a specified notice and consent before an overdraft protection fee is imposed when a customer initiates an electronic funds transfer at an automated teller machine or at a debit card point-of-sale terminal.~~ *The bill would prohibit a financial institution from imposing more than 3 overdraft protection fees on a customer in one day. The bill would prohibit an overdraft protection fee from exceeding 20% of the amount paid by a financial institution to cover an overdraft. The bill would prohibit a financial institution from engaging in a pattern or practice of delaying the posting of any deposit in an account, or manipulating the process of posting any check or other debit against another account, if that pattern or practice results in one or more overdrafts that trigger an overdraft protection fee \$25, except that for an overdraft of a customer's account in an amount of \$10 or less, an overdraft protection fee would be prohibited from exceeding the amount of the overdraft of the customer's account.* The bill would require the Department of Financial Institutions to adopt regulations implementing the provisions of the act and would authorize the department, by regulation or order, to restrict additional acts or practices that the department finds to be unfair or deceptive in connection with the offering, operation, and advertising of overdraft protection programs and services.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Division 23 (commencing with Section 80000)  
2     is added to the Financial Code, to read:  
3  
4     DIVISION 23. CONSUMER OVERDRAFT PROTECTION  
5                     FAIR PRACTICES  
6  
7     80000. This division shall be known and may be cited as the  
8     Consumer Overdraft Protection Fair Practices Act.  
9     80001. For purposes of this division, the following definitions  
10    shall apply:  
11    (a) "Department" means the Department of Financial  
12    Institutions.

1 (b) “Financial institution” means a bank organized under  
2 Division 1 (commencing with Section 99) ~~or~~, a credit union  
3 organized under Division 5 (commencing with Section 14000), *or*  
4 *a federally regulated bank or credit union.*

5 (c) (1) “Overdraft protection fee” means any fee or charge  
6 imposed by a financial institution, in connection with a customer’s  
7 account on which checks or other debits are paid by the financial  
8 institution, to cover the payment on a check or debit transaction  
9 for which there are insufficient funds in the customer’s account.

10 (2) A fee or charge described in paragraph (1) shall not be  
11 considered an overdraft protection fee if any of the following apply:

12 (A) The fee or charge is imposed on an incidental basis as a  
13 customer accommodation no more than three times during a  
14 calendar year.

15 (B) The fee or charge is imposed in connection with an extension  
16 of credit through an overdraft line of credit program where the fee  
17 or charge is considered a finance charge.

18 (C) The fee or charge has been disclosed in connection with a  
19 program under which the overdraft is covered by funds transferred  
20 from another deposit, share, or other asset account of the customer.

21 80002. A financial institution shall not impose an overdraft  
22 protection fee on a customer’s account unless all of the following  
23 are satisfied:

24 (a) The customer has provided specific written consent to a  
25 program or service that provides for the imposition of an overdraft  
26 protection fee when the financial institution covers the payment  
27 on a check or debit transaction for which there are insufficient  
28 funds in the customer’s account.

29 (b) The written agreement for overdraft protection, as described  
30 in subdivision (a), discloses, in a clear and conspicuous manner,  
31 all of the following:

32 (1) The amount of the overdraft protection fee imposed when  
33 the financial institution covers the payment on a check or debit  
34 transaction for which there are insufficient funds in the customer’s  
35 account.

36 (2) The categories of transactions to which an overdraft  
37 protection fee may be imposed, including whether an overdraft  
38 created by withdrawals at an automated teller machine or other  
39 electronic fund transfer will result in an overdraft protection fee.

1 (3) The time period in which the customer is required to repay  
2 to the financial institution the amount of money covered by the  
3 financial institution for a transaction that resulted in an overdraft.

4 (4) The circumstances under which a financial institution will  
5 not cover payment for a transaction for which there are insufficient  
6 funds in the customer's account.

7 (5) Other information required to be disclosed by regulation.

8 (c) The overdraft protection fee is separately and conspicuously  
9 disclosed, each time the fee is imposed and in the periodic account  
10 statements provided to the customer, and is also set forth as an  
11 annual percentage rate.

12 80003. The provisions of Section 80002 shall apply even if the  
13 amount of an overdraft protection fee is the same as or less than  
14 any fee imposed by the financial institution with respect to a  
15 customer's account when a check or other debit is returned unpaid.

16 80004. A financial institution that offers customers an overdraft  
17 protection program or service, as described in Section 80002, shall  
18 not make any of the following representations or statements in any  
19 advertisement or promotion:

20 (a) A representation or statement describing an account at the  
21 financial institution as being a free or no cost account if the account  
22 includes, or is promoted as including, overdraft protection services  
23 that involve the payment of overdraft protection fees.

24 (b) A representation or statement encouraging use of an account  
25 at the financial institution as a service to meet short-term credit  
26 needs or to obtain advances on a customer's next payment of salary,  
27 wages, benefits, or other income.

28 (c) A representation or statement that the financial institution  
29 will honor all checks or other debits presented against an account,  
30 if the financial institution retains discretion, at any time, not to  
31 honor any check or other debit presented.

32 ~~80005. (a) A financial institution shall not impose an overdraft~~  
33 ~~protection fee when a customer initiates, at an automated teller~~  
34 ~~machine or a debit card point-of-sale terminal, an electronic funds~~  
35 ~~transfer for which the customer's account lacks sufficient funds,~~  
36 ~~unless all of the following are satisfied:~~

37 ~~(1) The customer has affirmatively requested an overdraft~~  
38 ~~protection program or service, as described in Section 80002, that~~  
39 ~~includes specific consent to the imposition of an overdraft~~

1 ~~protection fee when an overdraft occurs at an automated teller~~  
2 ~~machine or at a debit card point-of-sale terminal.~~

3 ~~(2) The financial institution has provided a notice to the~~  
4 ~~customer after the transaction is initiated, but before the customer~~  
5 ~~completes the transaction, indicating the amount of the overdraft~~  
6 ~~protection fee the customer will be charged if the transaction is~~  
7 ~~completed.~~

8 ~~(3) The customer continues with the automated teller machine~~  
9 ~~or debit card point-of-sale terminal transaction after being provided~~  
10 ~~the notice set forth in paragraph (2).~~

11 ~~(b) A financial institution that offers customers an overdraft~~  
12 ~~protection program or service, as described in subdivision (a), shall~~  
13 ~~only indicate, upon a customer's inquiry at an automated teller~~  
14 ~~machine, the actual balance in the customer's account at the~~  
15 ~~financial institution. The financial institution shall not include the~~  
16 ~~amount of any credit or overdraft protection available to the~~  
17 ~~customer in the account balance.~~

18 ~~80006. An overdraft protection fee imposed pursuant to this~~  
19 ~~division shall not exceed 20 percent of the amount paid by the~~  
20 ~~financial institution to cover payment on a transaction for which~~  
21 ~~there are insufficient funds in the customer's account.~~

22 ~~80008. A financial institution shall not engage in a pattern or~~  
23 ~~practice of delaying the posting of any deposit in an account, or~~  
24 ~~manipulating the process of posting any check or other debit against~~  
25 ~~another account, if that pattern or practice results in one or more~~  
26 ~~overdrafts that trigger the imposition of an overdraft protection~~  
27 ~~fee.~~

28 *80005. A financial institution shall not impose more than three*  
29 *overdraft protection fees on a customer in one day.*

30 *80006. An overdraft protection fee imposed pursuant to this*  
31 *division shall not exceed twenty-five dollars (\$25). However, for*  
32 *an overdraft of a customer's account in an amount of ten dollars*  
33 *(\$10) or less, an overdraft protection fee shall not exceed the*  
34 *amount of the overdraft of the customer's account.*

35 ~~80009.~~

36 *80007. The department shall adopt regulations implementing*  
37 *this division and may, by regulation or order, restrict additional*  
38 *acts or practices that the department finds to be unfair or deceptive*  
39 *in connection with the offering, operation, and advertising of*  
40 *overdraft protection programs and services.*

1     ~~80010.~~

2     80008. The provisions of this division are severable. If any  
3 provision of this division or its application is held invalid, that  
4 invalidity shall not affect other provisions or applications that can  
5 be given effect without the invalid provision or application.

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7 *provision of this division or its application is held invalid, that*  
8 *invalidity shall not affect other provisions or applications that can*  
9 *be given effect without the invalid provision or application.*